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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,136	12/29/2000	Gary L. Shanklin	659/764	1796
757	7590	05/17/2004	EXAMINER	
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			HOWARD, SHARON LEE	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 05/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/753,136	Applicant(s) SHANKLIN ET AL.	
	Examiner Sharon L. Howard	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 14-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 14-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1615

Applicant please note that the elected claims should be 1-7,10-20 and 23-30.

Claim 14 has been amended.

Claims 23 and 24 have been cancelled.

Claims 1-7,10-20 and 25-30 are pending in this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7,10-20 and 25-30 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Siegfried ('527) in combination with Luu et al. ('763).

Siegfried teaches topical compositions comprising polyesters which include a backbone derived from the reaction of a diol and a diacid (col.3, lines 63-67, bridging col.4, lines 1-58). Siegfried teaches that the diacid include adipic acid or glutaric acid (col.5, line 11). Siegfried generically teaches that any alkane diol (col.5, line 38-46) is used to form the polyester, and Siegfried also generically teaches hydroxy-functional polyester diols (col.7, lines 8-10). Siegfried teaches organic acids such as citric acid, malic acid (col.10, lines 49-56). Siegfried teaches other ingredients such as emulsifiers and emollients (col.12, line 28).

Siegfried teaches that in preparing said composition, the composition may be in the form of a cream or a lotion (col.12, lines 52-65).

Siegfried does not particularly teach a surfactant.

However, Luu teaches a tissue product treated with a lotion composition, which provides a smooth feel, that is nongreasy, lubricious and is a solid at ambient temperature (see abstract). Luu teaches that the lotion composition comprises a cationic surfactant (col.8, lines 63-67), from about 5% to about 75% of an emollient (col.7, lines 33-67, bridging col.8, lines 1-62), and from about 0.025% to about 5% of anti-viral agent consisting of glutaric, citric and succinic acid (col.10, lines 9 and 10).

Both references teach a lotion composition comprising an organic acid and an emollient. It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. (*See In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).

The expected result would be a lotion composition comprising a polyester, an organic acid, a polyester and a surfactant.

One having ordinary skill in the art would have been motivated to prepare a third composition by including a surfactant into the composition of Siegfried, because a third composition can be used for the same purpose of treating a substrate with a lotion composition which is non-greasy and smooth feeling.

Response to Arguments

Applicant's arguments filed 2/9/04 have been fully considered but they are not persuasive. Applicant's argues that there is no suggestion or motivation to combine the teachings of the references to provide the tissue products or lotions as claimed. The

Art Unit: 1615

lotions disclosed in the Siegfried et al and Luu et al. references are clearly not intended for the same purpose.

In response to applicants' arguments, there is motivation to combine the Siegfried and Luu references, because the references both teach a lotion composition comprising an organic acid. The motivation for using the Luu '763 reference is that Luu teaches a lotionized tissue (see col.2, line 63) which acts to maintain the proper skin moisture/vapor balance and which users find soothing to irritated or damaged skin, and which kills bacteria and fungi commonly found on skin, thereby providing an enhanced cleaning and deodorizing benefit (see col.3, lines 5-7).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

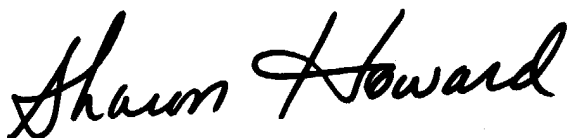
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1615


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (571) 272-0596. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sharon Howard
May 12, 2004



THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600